Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	)))))))	CC Docket No. 98-121

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COMMENTS OF AMERITECH ON PETITIONS FOR REHEARING AND/OR CLARIFICATION

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Dated: December 15, 1998

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INTRODUCTION AND SUMMARY

Ameritech[1/] submits these Comments to address particular aspects of BellSouth's Petition for Reconsideration and Clarification ("BellSouth PFR") of the BellSouth Second Louisiana Order ("Order"),[2/] which Ameritech supports, and aspects of AT&T's Petition for Reconsideration and/or Clarification ("AT&T PFR") and Sprint's Petition for Reconsideration and Clarification ("Sprint PFR"), both of which Ameritech opposes. By focusing only on the following issues, Ameritech does not in any way imply that it opposes any other aspect of BellSouth's PFR or that it supports any aspects of AT&T's and Sprint's PFRs. Rather, we have limited our analysis to issues that we believe are most significant and require further discussion.

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[1] Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

[2] See In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, CC Docket 98-121, FCC 98-271 (rel. October 13, 1998).

1. Sprint requests that the Commission not allow Bell operating companies ("BOCs") to rely on previously-satisfied checklist items in later § 271 applications for the same state. Ameritech opposes Sprint's proposal, which is inefficient, bad policy, and ignores the procedural safeguards already noted by the Commission.

2. Ameritech opposes AT&T's claim that competing local exchange carriers ("CLECs") that access unbundled local switching from an incumbent LEC through a line port have "exclusive use" of the switch for all purposes. AT&T's claim is based on a false technical premise, is inconsistent with the Commission's existing regulation on unbundled local switching (47 C.F.R. § 51.319(c)), and is anticompetitive and would undermine the Commission's procompetitive policies.

3. Ameritech supports BellSouth's request that the Commission reconsider its requirement that BOCs provide billing information for reciprocal compensation to a CLEC serving customers through unbundled local switching when the CLEC does not actually provide transport and termination for the call. This requirement directly conflicts with the language of the Telecommunications Act of 1996 ("Act") and the Commission's existing rules.

4. Ameritech opposes AT&T's attempt to overturn the Commission's approval of BellSouth's inbound joint-marketing approach. AT&T's arguments have been rejected before and there is no legitimate reason to adopt them now.

5. Ameritech reiterates its (and BellSouth's) argument that collocation is the <u>only</u> authorized method for obtaining access to and combining network elements at the incumbent's

premises.[3] The Order did not adopt this position. Order ¶¶ 168-70. BellSouth has asked for reconsideration and Ameritech urges the Commission to revisit its conclusion and adopts Ameritech's position as the only one consistent with the Act.

6. Ameritech also supports BellSouth's argument that the Order's imposition of new affiliate transaction requirements has no basis in the Act and is inconsistent with past Commission orders. The Commission should re-examine its conclusion and find that § 272 and its accounting rules do not require the additional level of unnecessary recordkeeping and disclosure specified in the Order.

7. Ameritech opposes Sprint's attempt to have the Commission establish a standard number of Board members for a § 272 affiliate. Ameritech urges the Commission to stand by its conclusion that neither the Act nor the Commission's regulations establish a minimum number of Board members. Order ¶ 330.

Before turning to these specific issues, some general comments on the Order are appropriate. Ameritech genuinely appreciates the Commission's efforts in the Order to further refine the roadmap for satisfying the competitive checklist. In particular, Ameritech compliments the Commission for taking the time to separately address and specify the requirements for each checklist item. This roadmap should prove very beneficial to all participants in future § 271 proceedings by setting the ground rules and expectations in advance. Ameritech also applauds the Commission's decision that BOCs which satisfy a checklist item in

[3] Reply Comments of Ameritech on Second Application By BellSouth to Provide In-Region, InterLATA Services in Louisiana, at 4-11 (filed Aug. 28, 1998).

one § 271 application may incorporate that showing by reference in future applications. Order ¶ 58. Given the complexity of the issues, it seems likely that in some cases it may take more than one § 271 application for a BOC to be found to fully satisfy the checklist. The Commission's decision will make the "follow-up" proceedings much more efficient and manageable, thereby increasing the speed with which BOCs can prove checklist compliance and bring a long overdue influx of competition to the interLATA marketplace.

While the Order marks significant progress, the Commission continues to take a microregulatory approach to technical operational issues and thereby find additional barriers to satisfying the checklist with each successive § 271 application. For example, each decision seems to institute detailed new OSS and performance reporting requirements. As a result, every § 271 decision raises the bar for the BOCs, which directly conflicts with the pro-competitive, deregulatory policy behind the Act.

This approach is inappropriate as a matter of policy because it increases uncertainty in the § 271 process and creates the risk that no BOC will ever be able satisfy the latest set of checklist requirements. See Order, Concurring Statement of Commissioner Harold Furchtgott-Roth at 4 ("I believe that the approach the Commission has taken with respect to OSS is far too regulatory"); id. at 6 (the Commission's "current approach . . . adds enormous uncertainty to the Section 271 process"). This "raising the bar" approach also is inappropriate as a matter of law. Id. at 5 ("I am not convinced that such performance measures [imposed under § 271] are lawful under Section 271 because they would implicitly expand the checklist beyond the 14 specific criteria.").

More fundamentally, the microscopic approach to technical operational issues may lead the Commission to miss the forest for the trees. The Act allows BOCs to provide in-region interLATA service once they have opened their local markets by giving competitors a "meaningful opportunity to compete." See Ameritech Michigan Order ¶ 130.[4] The checklist provides a way to establish that such an opportunity exists. The Commission's approach, however, treats the checklist not as a way to ensure open markets, but as a way to extract more and more from the BOCs by keeping the § 271 carrot always just out of reach. This approach makes the perfect the enemy of the good, to the ultimate detriment of consumers. Given the competitive stakes, there will always be some gripes — genuine or manufactured — about the BOC's market-opening performance, and there will always be one more CLEC proposal to require just a little more of the BOC. At some point, the Commission needs to realize that enough is enough, that there can be real competition without absolute perfection, and that the details of checklist compliance cannot remain a moving target. For all of these reasons, Ameritech strongly urges the Commission to refrain from microregulation and to focus on the larger goals and purposes of the Act — as it has done, for example, in its approach to previously-satisfied checklist items. These goals can be accomplished without requiring reams of statistical analyses, testing results, and intricate performance reports that add nothing to the bottom line decision but which make the § 271 process much more complex and burdensome and, at the end of the day, very likely impossible to navigate successfully.

[4] In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd. 20543, FCC 97-298 (rel. Aug. 19, 1997).

I. THE COMMISSION'S APPROACH TO CHECKLIST ITEMS THAT HAVE BEEN SATISFIED IS GOOD POLICY, AND SPRINT'S ATTEMPT TO REVERSE THAT APPROACH IS UNFOUNDED.

The Order concludes that once the Commission finds a BOC has satisfied particular checklist items, the BOC "may incorporate by reference its showing on these checklist items in any future application for section 271 approval" in that state. Order ¶ 58. The BOC may "certify in the [subsequent] application that its actions and performance at the time are consistent with the showing upon which we base our determination that the statutory requirements for these checklist items have been met [in the earlier application]." Id. Commentors then would have the opportunity to "direct their arguments to any new information" indicating that the checklist items are no longer satisfied. Id.

This approach is sensible as a matter of policy and administrative efficiency. There is no need to require a BOC, once it is found to have satisfied a checklist item, to re-make its prima facie case on that item in a subsequent application. Requiring the BOC to do so would increase the cost and burden of making § 271 applications and the cost and burden to the DOJ and the Commission in having to re-review the BOC's compliance with previously-satisfied items. Such repetition would be unnecessary and wasteful. The Commission's approach, by contrast, allows BOCs, commentors, and the Commission to focus in subsequent applications on the checklist items that remain in dispute, unless and until a commentor proves a need to re-visit a previously-satisfied item. This will help expedite the journey to § 271 approval and increased competition. See Order at p. 9 ("We hope this new certification option will enable BOCs to focus their energies on quickly satisfying the remaining statutory requirements and thereby expedite the local market-opening process by which the BOCs may obtain approval to provide in-region long distance service.")

Sprint, with an obvious incentive to make the § 271 process as burdensome, inefficient, and drawn out as possible, asks the Commission to effectively abandon this sensible approach. Sprint PFR at 2-5. Sprint's arguments are easily dismantled.

First, Sprint (at 3) inexplicably worries that the Commission's approach may "shift the burden of proof from the applicant to commenters." The Order, however, expressly "re-emphasize[s]" that "the BOC applicant retains at all times the ultimate burden of proof that its application satisfies all of the requirements of section 271." Order ¶ 51. The Commission's streamlined approach to subsequent applications does not saddle commentors with the ultimate burden of proof, but rather with the obligation to "provide evidence of their own to shift the burden of production back to the BOC." Order ¶ 53. This is the case whether the BOC's prima facie case is made in a prior application or in a pending application. Thus, there is no need to "clarify" this aspect of the Order, and Sprint's only motive in requesting such "clarification" is to avoid its initial burden of production on previously-satisfied items.

Second, Sprint (at 3) contends that any certification of continued compliance by a BOC "must be specific" and that "[t]he basis for any claim of 'consistency' must be submitted for the record," including any "new information . . . since the time of the FCC's Order" such as "current [performance] measures . . . along with an appropriate cross-reference to performance measure data previously submitted." Sprint apparently believes that the only way a BOC could certify continued satisfaction of an item is to make a complete evidentiary presentation, including affidavits and performance reports. But that is precisely what the Commission sought to avoid. See Order ¶ 4 (noting that "it is vitally important to make the section 271 application process as orderly and predictable as possible for all interested parties"). Nor would such reinvention of the wheel serve any useful purpose. Competing local exchange carriers, such as Sprint, naturally monitor the performance of incumbent LECs quite closely and take a great interest in § 271 proceedings. If they have any new information that would cast doubt on the BOC's certification of compliance, they have the opportunity to make their case in reply comments and affidavits. Order ¶ 58. Indeed, the performance reports that Sprint refers to are routinely made available to CLECs and are not "in the BOC's sole possession." See Sprint PFR at 3. The only result of Sprint's proposal would be to unnecessarily burden both the BOCs and the Commission with retracing of the same ground, slowing the § 271 process and the growth of interLATA competition.

Third, Sprint (at 4) argues that the Commission should "clarify that any relevant changes in law will supersede a previous finding of compliance." This is just another attempt to place artificial hurdles before the BOCs and to unnecessarily complicate the § 271 process. The Commission, the DOJ, state regulators, and commentors can be counted on to address the impact of any alleged change in the law since a previous § 271 application. Moreover, the BOCs themselves would likely address any clearly relevant change in the law on their own rather than giving opponents the first word. By the same token, however, the BOCs should not be required to hunt for purported changes in the law to uncover everything that arguably might undermine their prior showing; nor should they be required to re-prove all or part of their case on a checklist item until the relevance and effect, if any, of any alleged change in the law is clearly determined.

II. AT&T'S "EXCLUSIVE USE" CLAIM REGARDING UNBUNDLED LOCAL SWITCHING IS WRONG AS A MATTER OF FACT, LAW AND POLICY.

Ameritech recognizes that a CLEC that provides local exchange service by accessing unbundled local switching ("ULS") through a line card[5] also obtains the ability "to offer, and bill for, exchange access" to interexchange carriers ("IXCs") that wish to originate or terminate long distance calls to the CLEC's local customer served by that line port. Order ¶ 208. AT&T, however, seeks to unilaterally extend this "ability to offer" into a right of "exclusive use," arguing that a carrier using unbundled local switching "has the exclusive right to provide service using that element to end users." AT&T PFR at 4 (emphasis added). AT&T mistakenly relies on this Commission's Local Competition First Reconsideration Order (11 FCC Rcd. 13042) to support this "exclusive use" claim. Id. at 5.

As discussed below, AT&T's reliance on the Commission's First Reconsideration Order misplaced. Moreover, its "exclusive use" claim (i) is based on a false technical premise, (ii) is inconsistent with the Commission's existing unbundled local switching regulations, and (iii) is anticompetitive and would undermine the Commission's procompetitive policies. The Commission should reject AT&T's "exclusive use" interpretation and clarify that a line port enables access to

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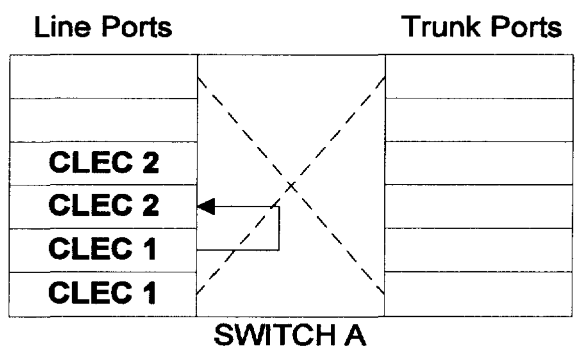
[5] A line card is a plug-in circuit in a local exchange switch that operates ringing, holding and other features associated with one or more telephone lines. It is used to access unbundled local switching. Depending on the switch, a line card can support multiple telephone lines, or line ports. The Commission defined local switching to encompass: line-side facilities (such as the line card), trunk-side facilities (such as a trunk port), and features, functions and capabilities, including the basic switching function. See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499, FCC 96-325, at ¶ 412 n. 913 (rel. Aug. 8, 1996) ("First Report and Order") (subsequent history omitted); and 47 C.F.R. § 51.319(c)(1)(i)(A).

local switching functionality, but not exclusive use of the features, functions and capabilities of the switch, including the basic switching function. In particular, the Commission should reaffirm — as Rule 51.319(c) currently provides — that a user of a trunk port also obtains the right to use shared switching functionality to enable it to complete trunk port-to-line port calls for its local exchange customers. Furthermore, where both originating and terminating carriers claim use of the shared switch fabric, the Commission should clarify that the originating carrier — as the initial cost causer — should be charged for the shared switching functionality in the terminating switch.

A. AT&T's "Exclusive Use" Claim Is Based On A False Technical Premise.

AT&T's notion that access to a line port brings with it the "exclusive use" of all switching functionality for calls that both originate from and terminate to the customer served by that line port is incorrect as a technical matter. The fact is that many other carriers that use line ports and trunk ports to provide local service may also use the same shared basic switching function to complete calls to the customer served by that line port. The fallacy of AT&T's "exclusive use" claim is best illustrated by local intraswitch calls.



Assume that in Switch A two CLECs are using unbundled local switching line ports to serve their respective customers. If a customer of CLEC 1 calls a customer of CLEC 2, both carriers cannot obtain "exclusive use" of the same local switching functionality for the same call. The switching fabric is a shared function used by both carriers to originate and terminate calls for their local customers. If a customer of CLEC 1 calls a customer of CLEC 2, the originating carrier (here, CLEC 1) pays for the use of the switching functionality to complete the call to the customer of CLEC 2. No one would suggest that CLEC 1's use of the switching functionality to complete the call is improper because it intrudes on CLEC 2's "exclusive use" of the switching capability for the line port that CLEC 2 uses to provide service to its customer.

Thus, contrary to AT&T's assumption, the fact that the line port is a dedicated functionality does not mean that the user of the line port also obtains "exclusive use" of the shared functionality of the switch for that particular line port.[6]

B. AT&T's "Exclusive Use" Claim Is Inconsistent With The Commission's Existing Unbundled Switching Regulation (Rule 51.319(c)) and its First Reconsideration Order.

AT&T's "exclusive use" claim is inconsistent with the Commission's existing regulations because — unlike Rule 51.319(c) — AT&T's "exclusive use" claim overlooks the fact that carriers using trunk ports have the same right to use the basic switching function as carriers using line ports. The Commission's existing definition of local switching includes both line-side and trunk-side

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[6] This concept is explained in more detail in the Letter from Lynn Starr, Executive Director — Federal Relations, Ameritech, to Magalie Roman Salas, Secretary — FCC, at 3-5 (filed March 2, 1998, in CC Docket 96-98) (Demonstrating that a carrier using an unbundled line port does not become the "exclusive" provider of all switching functions when a call terminates to its end user for interswitch local calls, for intraLATA toll calls and for interLATA access calls.)

facilities: "The line-side facilities include the connection between a loop termination at, for example, a main distribution frame (MDF), and a switch line card," and "Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card." First Report and Order ¶ 412. Moreover, the "basic switching function" includes the function of connecting "lines to lines, lines to trunks, trunks to lines, trunks to trunks." 47 C.F.R. § 51.319(c)(1)(i)(C) (emphasis added); see also Order ¶¶ 214-15.

The Commission's regulations do not require that a trunk port be dedicated to a particular end user. In fact, many different trunk ports in a local switch may terminate traffic to the same line port, and many line ports may originate traffic to the same trunk port. Since interoffice transport is unbundled from switching, the carrier using such transport (whether dedicated or shared) is required to obtain access to unbundled local switching trunk ports at both ends of each interoffice transport facility to gain access to the basic switching functionality to originate or terminate calls.[7] For these reasons, the Commission's regulations entitle the user of a trunk port to obtain the capabilities of the switch, which include "the basic switching function of connecting . . . trunks to lines." See 47 C.F.R. § 51.319(c)(1)(i)(C). AT&T's claim that users of line ports have "exclusive use" of the switch is in direct conflict with these requirements.

Moreover, contrary to AT&T's apparent belief, the Commission's First Reconsideration Order did not modify these clear provisions of Rule 51.319(c). Rather, the First Reconsideration Order addressed the rights of carriers using unbundled local switching line ports, not carriers using

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[7] As the Commission recognizes, a BOC must provide a user of unbundled interoffice transport with access to switch trunk ports and cross-connect capability. See, e.g., Order ¶ 205 (dedicated transport), ¶¶ 209, 228 (shared transport), and ¶¶ 214-15 (basic switching of trunks to lines).

unbundled local switching trunk ports.[8] The Commission also did not purport to make an absolute finding that a CLEC using a line port obtained the "exclusive use" of the switch for all purposes, but only as a "practical matter" or "effectively" for certain switching features and functionalities. See First Reconsideration Order ¶¶ 11-13. Finally, the First Reconsideration Order was only addressing a CLEC obtaining unbundled local switching and its ability to provide "services requested by the customer." Id.¶ 12. The Commission did not address the purchase of services offered by the CLEC to IXCs that wish to originate or terminate long distance calls to the CLEC's local exchange customer. Therefore, contrary to AT&T's claim, the Commission's decision in the First Reconsideration Order did not mandate that IXCs purchase access from CLECs using unbundled local switching.

C. AT&T's "Exclusive Use" Claim Is Anticompetitive and Would Undermine The Commission's Procompetitive Policies.

The fiction that a carrier using a line port obtains "exclusive use" of all local switching for both outgoing and incoming calls for that line port also would undermine the Commission's procompetitive policies to encourage efficient local entry. That is because the "exclusive use" notion creates severe technical problems, significant delays, unnecessary costs, and anticompetitive price gouging.

Neither the existing exchange message records nor the incumbent LECs' local switches have the capability to identify or record the data necessary to bill reciprocal compensation and access

[8] Under the Commission's rules, unbundled local switching encompasses trunk-side facilities, including trunk ports. See First Report and Order, ¶ 412 ; 47 C.F.R. § 51.319(c)(1)(i)(B). As the Commission recognized here, access to the functions of the switch through the trunk-side facilities of the switch is encompassed in the definition of unbundled local switching. See, e.g., Order ¶ 214.

charges for terminating traffic. This recording capability would require a considerable expenditure of time and money to develop and implement. Moreover, originating local carrier identity is not currently contained in the industry standard exchange message record. Although the billing forums are looking at this issue, there is no immediate solution, and switch vendors have not committed to any development schedule to address this issue. Therefore, it is currently impossible to identity the originating local exchange carrier, even if terminating usage were to be recorded. (Significantly, this limitation would be irrelevant if the originating carrier was charged for both originating and terminating unbundled local switching.)

In addition to these significant network costs and delays, AT&T's "exclusive use" argument is anticompetitive and can result in excessive price gouging. In fact, AT&T's claim in this docket that a carrier that obtains access to unbundled switching through a line port has the "exclusive right to provide service using that element" is in direct conflict with a legal position it is taking in a recent Petition for Declaratory Ruling.[9] In its Switched Access Petition, AT&T asks the Commission to rule that IXCs may elect not to purchase switched access service offered under tariff by CLECs. AT&T's request is based on the "problems of extremely high access rates charged by certain CLECs (particularly, though not exclusively, for terminating access)."[10] According to AT&T, in some cases these rates are more than twenty times those charged by the incumbent LEC. AT&T's requested

[9] In the Matter of Interexchange Carrier Purchases of Switched Access Service Offered By Competitive Local Exchange Carriers, AT&T Petition for Declaratory Ruling (filed Oct. 23, 1998) ("AT&T Switched Access Petition").

[10] It is unclear whether AT&T's Switched Access Petition applies to CLECs that own their own switch, or to facilities-based CLECs that provide service using unbundled local switching, or to both. Insofar as AT&T's Switched Access Petition applies to CLECs offering exchange access using unbundled local switching pursuant to Rule 51.319(c), it should be granted. On the other hand, to the extent AT&T's Switched Access Petition applies to facilities-based CLECs, it appears to be procedurally and substantively unjustified.

relief — to simply ignore these CLEC tariffed access charge rates — is unjustified where switch-based CLECs have effective tariffs on file. However, if facilities-based CLECs are offering exchange access for their local customers through unbundled local switching, then AT&T's request has merit because the basic switching function of unbundled local switching is a shared functionality.

The fact that a CLEC that uses an unbundled local switching line port may offer to provide exchange access to an IXC for such local customers does not, however, require the IXC to purchase exchange access from that CLEC. Thus, the Commission should rule here that an interexchange carrier has the option to choose to purchase exchange access from a CLEC providing telephone exchange service and exchange access using unbundled local switching, or to continue to obtain access service from the incumbent LEC. This, of course, would eliminate the anticompetitive price gouging that prompted AT&T to file its recent Switched Access Petition. For example, if the CLEC attempts to charge excessive originating or terminating exchange access rates, the IXC should have the right to choose to continue to purchase tariffed switched exchange access from the incumbent. Again, this procompetitive result is required because the switching functionality of connecting lines to ports and ports to lines is a shared functionality and not "an exclusive" functionality.

III. NO RECIPROCAL COMPENSATION USAGE INFORMATION IS REQUIRED OR NECESSARY FOR LOCAL CALLS THAT TERMINATE TO A CLEC SERVING CUSTOMERS USING UNBUNDLED LOCAL SWITCHING.

BellSouth's PFR (at 11-12) asks the Commission to reconsider its conclusion that a BOC must provide a CLEC using unbundled local switching with either: (1) actual terminating usage data indicating how many calls/minutes the CLEC's customer received and identifying the carriers that originated these calls; or (2) a reasonable surrogate for this information. Order ¶¶ 232-34.

Ameritech supports BellSouth's request. As a matter of law, neither the expensive and timely network upgrades necessary to provide actual terminating usage data nor a "reasonable surrogate" for such data is required. That is because no reciprocal compensation is due to a CLEC serving customers using unbundled local switching if such CLEC does not provide transport or termination of the local call.

Section 251(b)(5) of the Act establishes the duty to provide for reciprocal compensation arrangements for the "transport and termination of telecommunications." A CLEC that uses an unbundled local switching line port to provide local exchange service to its customers does not incur any "transport and termination" costs when it receives a local call originated by the incumbent LEC, by itself or another CLEC providing local service through unbundled local switching, or from a switch-based CLEC that is interconnected with the incumbent LEC. Because no costs are incurred by and no payments are due from the CLEC when it receives a local call in each of these situations, BellSouth appropriately did not provide terminating switch usage information to the terminating CLEC.[11] Under these circumstances, BellSouth argued that it was not required to provide billing information for this local terminating traffic, but the Commission rejected that argument, concluding that "BellSouth's position ignores its obligation under our rules requiring it to provide billing information to purchasers of unbundled local switching." Id. ¶ 234.

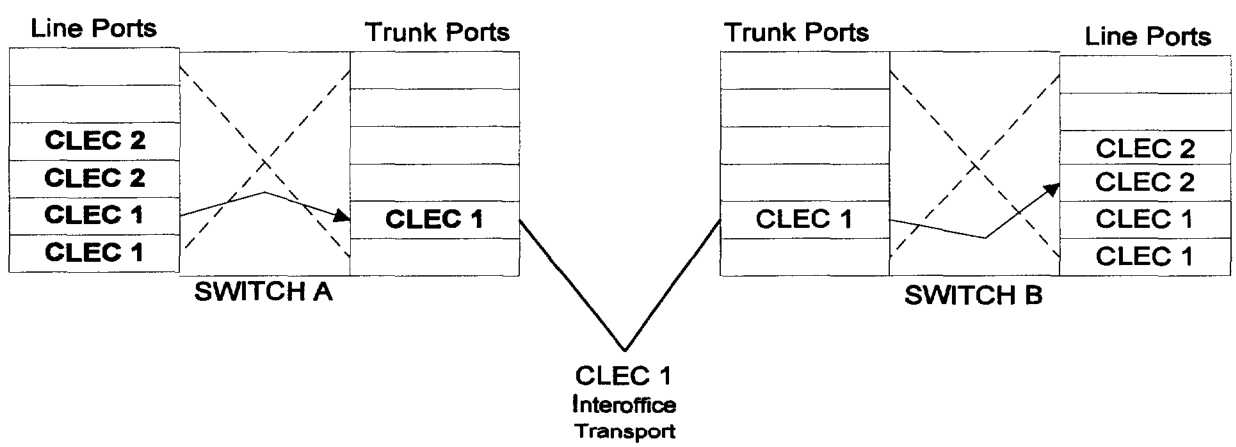
Far from ignoring the Commission's rules, BellSouth's position is required by the Commission's existing rules on unbundled switching. The Commission did not cite any specific rule in reaching its conclusion. That is because there is no rule that requires incumbent LECs to provide

[11] See BellSouth Varner Affidavit at ¶ 192.

terminating usage billing information to a CLEC using an unbundled switching line port where — as correctly proposed by BellSouth — the CLEC (i) is not billed by the incumbent for either the use of a trunk port or for basic switching from the trunk port to the line port, and (ii) therefore incurs no transport or termination cost associated with the incoming local call.

Moreover, as shown above in connection with AT&T's erroneous "exclusive use" claim, the practical effect of the Commission's rules is that the originating local carrier will purchase originating switching, a trunk port in the originating switch, interoffice transport, a trunk port in the terminating switch, and switching from the trunk port to the line port of the called party. Because of this, the CLEC at the terminating end, which accesses unbundled local switching through a line port to provide telephone exchange service, will not incur any usage-sensitive costs when its customer receives local calls.

This can be illustrated by a "call flow" for a local call between two switches. This example assumes that the originating carrier, CLEC 1, obtains interoffice transport facilities and trunk ports at the originating and terminating switch locations. It also assumes CLEC 1 and CLEC 2 use line ports to serve their respective end user customers.



When CLEC 1's customer in Switch A calls CLEC 2's customer in Switch B, the originating carrier providing local service (in this example, CLEC 1) should be able to obtain access to: unbundled local switching for originating the call in Switch A, trunk ports at both Switches A and B, interoffice transport between Switches A and B, and unbundled local switching in Switch B to terminate the call to the line port of the called end user. The call is then "handed off" at the "dedicated" line port of CLEC 2's customer in Switch B. Because the unbundled local switching line port and the loop have non-traffic-sensitive, flat-rated charges, CLEC 2 incurs no additional usage-sensitive "transport or termination" costs for completing the call. Therefore, because the originating carrier will obtain interoffice transport and a trunk port and trunk-to-line switching at the terminating end office, the CLEC that receives such a call does not need terminating usage information, since it has no "transport or termination" costs to recover. The Commission should therefore approve of the arrangement proposed by BellSouth.

IV. AT&T'S ARGUMENTS REGARDING BELLSOUTH'S MARKETING SCRIPT HAVE ALREADY BEEN REJECTED AND ARE INCONSISTENT WITH THE ACT.

AT&T asks the Commission to reconsider its approval of BellSouth's inbound marketing script for interLATA services. AT&T PFR at 9-15. AT&T's arguments, however, have already been considered and rejected by the Commission in the BellSouth South Carolina Order.[12/] Indeed, AT&T also made the same arguments in its unsuccessful Petition for Reconsideration of that order. The Commission should again deny AT&T's request to reverse course.

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[12] In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina, 13 FCC Rcd. 539, FCC 97-418 (rel. Dec. 24, 1997).

AT&T claims that BellSouth's plan for marketing interLATA service on inbound calls once it receives § 271 authority (1) does not comply with § 251(g), and (2) does not have to be approved to preserve BellSouth's ability to engage in joint marketing. AT&T PFR at 13-15. The first argument has already been rejected in both the BellSouth South Carolina Order (¶¶ 237-39) and the Non-Accounting Safeguards Order (¶ 292).[13] The Non-Accounting Safeguards Order specifically concluded that a BOC's equal-access obligation under § 251(g) — i.e., to provide any customer ordering local exchange service with the names of all interexchange services in its service area in random order — is not incompatible with the BOC's right to jointly market its interLATA service with local service, so long as customers are informed that they have a free choice of interexchange carriers. Non-Accounting Safeguards Order, ¶ 292 ("We further conclude that the continuing obligation to advise new customers of other interLATA options is not incompatible with the BOCs' right to market and sell the services of their section 272 affiliates under section 272(g).") As the Commission later explained in approving the BellSouth marketing script, this "harmonize[s] the existing equal access requirements with [the BOCs'] right under the Act to engage in joint marketing." BellSouth South Carolina Order ¶ 238.[14] That is a wholly appropriate approach to interpreting the Act. See United States National

[13] In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd. 21905, FCC 96-489 (rel. Dec. 24, 1996).

[14] Indeed, when it suits its purposes AT&T has emphasized "the significance of a Commission determination under Section 271 that a BOC may provide in-region interLATA services" in defining the nature of a BOC's equal-access obligations. See Complainants AT&T Corp.'s and MCI Telecommunications Corporation's Reply Brief in Support of Their Motion for Interim Relief in the Form of a Standstill Order, File No. E-98-41, at 17-18 (arguing against any type of joint marketing before § 271 approval by noting that once a BOC has § 271 approval, "other providers will be capable or providing a 'one-stop' package of local and long distance services that could compete with a BOC's integrated marketing of a similar package.")

Bank of Oregon v. Independent Ins. Agents of America, 508 U.S. 439, 454-55 (1993) ("Statutory construction is a holistic endeavor") (internal quotation marks omitted); ALCOA v. Bonneville Power Admin., 903 F.2d 585, 755 (9th Cir. 1989) (a "basic rule of statutory construction is that one provision should not be interpreted in a way . . . that renders other provisions of the same statute inconsistent or meaningless") (internal quotation marks omitted).

Moreover, what AT&T fails to recognize is that "equal access" need not be defined in rigid terms for all time. The Act gives BOCs an opportunity to provide in-region interLATA service, upon § 271 approval, and the right to jointly market that service. 47 U.S.C. § 272(g). Section 251(g) cannot be read in a manner that trumps that right by strictly limiting the type of joint marketing that a BOC may perform.[15] See United States National Bank, 508 U.S. at 454-55; ALCOA, 903 F.2d at 755. AT&T, MCI WorldCom, Sprint and other IXC/CLECs obviously can engage in inbound joint marketing.[16] Excluding BOCs from that same marketing method would improperly continue outdated MFJ-style restraints on a BOC that has done all the Act requires to be allowed to freely compete in the interLATA market.

AT&T's argument that joint marketing on inbound calls is not necessary to preserve the BOCs' right to engage in joint marketing — because the BOCs can still engage in outbound telemarketing and general advertising — is equally baseless. Nothing in § 272(g) limits the

[15] The BellSouth approach is not necessarily the only way to harmonize §§ 251(g) and 272(g). As the Commission has noted, the BellSouth approach is a "safe harbor," and other marketing approaches may well be equally acceptable. BellSouth South Carolina Order ¶ 236.

[16] In fact, the Act specifically expands the large IXCs' joint-marketing rights upon a BOC's receiving § 271 approval or as of February 8, 1999, whichever comes first. 47 U.S.C. § 271(e).

BOCs' joint marketing rights to exclude marketing on inbound calls. BellSouth South Carolina Order ¶ 239 ("Section 272(g) . . . does not contain any exception for inbound calls or calls from new customers.") This is particularly significant in light of the facts that Congress (1) obviously was well aware of the existing equal access requirements on inbound calls under the MFJ (see § 251(g); Lorillard v. Pons, 434 U.S. 575, 581 (1978)), and (2) knew how to limit a BOC to specific types of marketing when it so desired. See 47 U.S.C. § 274(c)(2)(A) (limiting BOCs to inbound telemarketing or referral services related to the provision of electronic publishing). In spite of these facts, Congress did not craft § 272(g) to limit the types of permissible marketing by the BOCs. Thus, there is no basis for reading a "no inbound calls" restriction into § 272(g). See United States v. Rutherford, 442 U.S. 544, 552 (1979); 2A N. Singer, Statutes and Statutory Construction, § 47.11 (rev. ed. 1992) ("exceptions [in statutes] are not to be implied"; "[a]n exception cannot be created by construction").[17] Accordingly, AT&T's arguments should be rejected once more.

V. COLLOCATION IS THE ONLY AUTHORIZED METHOD FOR CLECs TO COMBINE UNBUNDLED NETWORK ELEMENTS AT THE INCUMBENT'S PREMISES.

Under prevailing law, incumbent LECs may not be required to combine unbundled network elements on behalf of requesting carriers or to provide requesting carriers with preassembled combinations of network elements. Iowa Utilities Board v. FCC, 120 F.3d 753,

[17] In addition, any reading of § 272(g) that barred the BOCs from inbound marketing would raise serious First Amendment concerns. See Comments of Ameritech on Application By BellSouth to Provide In-Region, InterLATA Services in South Carolina, at 11-15, CC Docket No. 97-208 (filed Oct. 20, 1997).

813 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (1998). Rather, it is the requesting carrier that combines unbundled network elements into an alternative, competing network. Id. Given these facts, the question arises of how CLECs can combine unbundled network elements at the incumbent LEC's premises. The Order appears to find that incumbent LECs must provide CLECs with the option of collocation and other, unspecified methods of access. Order, ¶¶ 168-70. As demonstrated below, however, collocation (physical and virtual) is the only authorized method of access at the incumbent's premises,[18] and the Commission should revise its Order accordingly.

The statutory text leaves no doubt that collocation is an authorized method for requesting carriers to combine unbundled network elements at the incumbent's premises. Section 251(c)(3) requires incumbent LECs to provide "access to network elements on an unbundled basis at any technically feasible point," and further requires that such access be provided "in a manner that allows requesting carriers to combine such elements." 47 U.S.C. § 251(c)(3). Section 251(c)(6) requires incumbent LECs to provide "physical collocation of equipment necessary for . . . access to unbundled network elements at the premises of the [incumbent] local exchange carrier," and permits "virtual collocation" as a substitute for physical collocation under certain circumstances. Id. § 251(c)(6). These provisions make clear that a requesting carrier can obtain "access to unbundled network elements" — and that the carrier may "combine such elements" — in a collocation space.

[18] Ameritech recognizes that there may be other places where a requesting carrier may obtain access to unbundled network elements. The focus of these comments is the narrow case of physical access at the incumbent's premises.

Collocation is not only an authorized method for requesting carriers to combine unbundled network elements at the incumbent LEC's premises, it is the only method. The only method set forth in the Commission's rules for obtaining a physical occupation of the incumbent's premises is collocation. 47 C.F.R. § 51.321(b)(1). Indeed, the Commission's rules elsewhere stated that "an incumbent LEC is not required to permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space." Id. § 51.323(h)(2).

In this respect, the Commission's rules correctly reflect the backdrop against which Congress enacted § 251(c)(6). In Bell Atlantic v. FCC, 24 F.3d 1441, 1446-47 (D.C. Cir. 1994), the court ruled that the Commission had no statutory authority to require incumbent LECs to permit other carriers to physically occupy portions of their central offices. Congress expressly authorized the Commission to require collocation in § 251(c)(6), and nowhere else. This fact confirms that collocation is the only authorized method for requesting carriers to occupy an incumbent LEC's premises — and thus the only authorized method for a requesting carrier to gain access to and combine unbundled network elements at the incumbent's premises.

Because collocation is the only statutorily authorized method for a requesting carrier to obtain access to and combine unbundled network elements at the incumbent's premises, collocation by necessity satisfies an incumbent LEC's obligations under § 251(c)(3) to provide "nondiscriminatory" access to unbundled network elements. Of course, the Commission will expect a BOC to demonstrate that it is providing collocation in a manner that actually permits requesting carriers to obtain access to and to combine network elements. As the Commission has previously stated, a BOC must demonstrate that it: (i) makes collocation available pursuant to legally binding and concrete terms and conditions; (ii) timely implements such collocation arrangements; and (iii) delivers requested unbundled network elements to such collocation space in a manner that allows the requesting carrier to combine such elements to provide telecommunications service. See BellSouth South Carolina Order ¶¶ 195-209.

Based on the showing made by BellSouth in its application and supporting materials, it has satisfied this standard, and the Commission should revise its Order accordingly.

VI. THE NEW PUBLIC DISCLOSURE REQUIREMENTS FOR AFFILIATE TRANSACTIONS ARE INCONSISTENT WITH THE ACT AND PRIOR COMMISSION ORDERS.

The Commission has already clarified the requirements of § 272(b)(5) of the Act in the Accounting Safeguards Order.[19] To satisfy § 272(b)(5)'s requirements, the Accounting Safeguards Order (¶ 122) requires the BOC's separate § 271 affiliate to (i) post a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction; (ii) ensure that the description and terms of the transaction allow the Commission to evaluate compliance; and (iii) place the information at the principal place of business of the BOC so it is available for public inspection. The Ameritech Michigan Order (¶ 369) required that Ameritech disclose actual rates, rather than just identify the valuation rule applicable to an

[19] See In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd. 17539, FCC 96-490, at ¶¶ 111-124 (rel. December 24, 1996).

affiliate transaction, in order to "be sufficiently detailed to allow us to evaluate compliance with our accounting rules."

After the clarification in the Ameritech Michigan Order, Ameritech revised its affiliate transaction disclosures to include a detailed description of all services and the rates applicable to the previously posted master mutual services agreements. This was accomplished by posting, inter alia, service orders relating to those agreements for the following services and average hourly rates:

External Relations Services - $66.12 per hour

Government Relations Services - $74.37 per hour

Security Services - $62.73 per hour

Labor Relations Services - $61.64 per hour

Environmental, Health and Safety Services - $54.96 per hour

Human Resources — Non-management Staffing Services - $48.42 per hour

Data Processing Services — Programming/Development - $68.26 per/hour

Each of these rate disclosures carries the following explanation, in order to clarify that the charges are based on actual employee hours and salaries, in accordance with the Commission's cost accounting rules:

> The actual Fully Distributed Cost-based (FDC) rates may vary monthly due to one or more of the following variables related to which specific employees provide the service: (a) mix of employees by salary grade and the actual amounts paid to these employees within the salary ranges for the salary grade; (b) the actual time expended by each employee providing the service; and (c) changes in overhead loading rates.[20]

[20] See ACI Agreements, items 31 to 60, posted at www.ameritech.com/regulatory.

Ameritech believed that this level of detail for disclosure of rates for services was sufficient to satisfy the requirements of § 272 and the Commission's Accounting Safeguards Order and Non-Accounting Safeguards Order.[21] However, the Order (¶ 337) imposes on BellSouth the additional obligations to

> include . . . the frequency of recurring transactions and the approximate date of completed transactions . . . (and for services) disclose the number and type of personnel assigned to the project, the level of expertise of such personnel, any special equipment used to provide the service, and the length of time required to complete the transaction.

BellSouth has asked the Commission to reconsider and reject these new requirements (BellSouth PFR at 15-18) and Ameritech fully agrees. First, it is impractical and meaningless to require disclosure of the frequency of recurring services. It is sufficient for the Commission and the public to be informed that such services will be provided to the separate affiliate when requested. Second, since most affiliate services are ongoing, there is no date of completion to disclose. Yet, the ordering language cited above suggests an unnecessary and unreasonable need to disclose every time a project is completed. Third, the imposition of the additional project-by-project disclosure requirements related to the number, type and expertise level of personnel, use of special equipment, and completion time serve no legitimate purpose, are enormously costly to implement, and will require the unwarranted disclosure of BOC proprietary cost structure and separate affiliate business activity to competitors.

The costly, unnecessary, and inappropriate effect of these additional requirements is best illustrated by comparing one of Ameritech's current disclosures with what would apparently be required under the Order. Ameritech's current disclosure makes public the fact that the separate

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[21] This approach was discussed in detail with the Commission staff in April, 1998 as part of the collaborative § 271 filing process, and Staff raised no adequacy objection.

subsidiary receives staffing services (including advertising, recruiting, interviewing, extending job offers and hiring) from each of the Ameritech operating companies at a fully distributed cost ("FDC") rate of approximately $48.42 per hour. Of course, the human resources personnel who provide this service vary in level of salary and expertise, and the number involved will vary depending on the requisite activity level.

Assuming, arguendo, that Ameritech could comply with the new disclosure requirements in the Order, it would arguably need to separately define each job search as a separate project (e.g., hiring service representatives in Muncie involves different employees and resources than hiring operators in Ann Arbor), identify all employees who might become involved in each job search, determine the FDC loaded salary for employees working on each search, do a market study, somehow determine a completion time, identify any "special equipment used to provide the service," reduce these specifics to writing for each search, obtain signatures of the Ameritech operating company and separate affiliate, post all this on the Internet within 10 days and maintain copies at their principal places of business. This process would need to be repeated for each subsequent job search, particularly if different or additional Ameritech operating company employees become involved.

And what purpose would this additional disclosure serve? The current form of disclosure allows the Commission to evaluate compliance and notifies competitors of the availability of the service and the approximate rate, and the other safeguards assure that the separate subsidiary pays the actual charges, not the posted estimate. Therefore, these additional requirements are contrary to the Commission's earlier conclusion in the Accounting Safeguards Order that

> our existing cost allocation and affiliate transaction rules, as modified herein, are appropriate for any of the new activities described in Section 260 and 271 through 276. We therefore find that adoption of the existing cost allocation rules and the affiliate transactions rules, as modified herein, will successfully achieve our goals.

Accounting Safeguards Order ¶ 26. Furthermore, the Commission's expansion of the disclosure requirements is not necessary to ensure compliance with the accounting rules. The biennial audits will "require a thorough examination of all affiliate transactions in order to evaluate compliance with the statute and our rules." Order ¶ 338. There are other accounting safeguards as well, including the cost allocation standards (47 C.F.R. § 64.901 (Allocation of Costs); id. § 64.902 (Transactions With Affiliates)); cost allocation manual requirements (id. § 64.903); independent audit requirements (id. § 64.904); automated reporting management information system ("ARMIS") requirements; routine Commission audits; and requirements on the display for the frequency of affiliate transactions in cost allocation manuals (Responsible Accounting Officer ("RAO") Letter 26).

Clearly, the additional public disclosure requirements are not warranted "because a competitor would also have to know the number of hours required for each labor category as well as the associated hourly rate," as asserted in the Order (n. 1055). Tellingly, no competitor has requested any of the services Ameritech provides to its separate affiliate. And if one did, Ameritech would ensure that it quotes and charges the same actual FDC rates as it charges the affiliate for the same service, under the same terms and conditions.

The Commission should also consider the burdensome and anticompetitive effects of imposing requirements that unnecessarily make BOC long distance entry more costly and difficult to achieve, require disclosure of its proprietary costs, and serve no legitimate public policy purpose. Like BellSouth, Ameritech's reporting and recordkeeping systems and processes do not capture and/or retain the added detail that the Order requires. In order to implement the new requirements, Ameritech would need to increase personnel devoted to affiliated billing processes, substantially revise current billing systems, increase storage capacity, revise billing procedures and forms, and train personnel who initiate, maintain and track affiliated billings. Ameritech estimates the additional cost of implementing these new mandates could approach $4 million dollars. Obviously, a cost/benefit analysis would show that the benefits of the additional posting requirements do not outweigh the cost to comply.[22]

VII. THE COMMISSION SHOULD REJECT SPRINT'S PROPOSAL TO ESTABLISH A STANDARD NUMBER OF BOARD MEMBERS.

The Order properly rejected Sprint's contention that having one director for the separate affiliate is insufficient to satisfy the requirement of section 272(b)(3), finding that neither the statute nor its rules establish a minimum number of directors. Order ¶ 330. In its PFR, after claiming it was not arguing for a minimum number of directors, Sprint extols the virtues of dividing board functions among various committees, argues that BSLD's single director board "disservices the underlying concerns and policies" and then requests that the Commission require BellSouth to "reconfigure the structure of the BSLD board." Sprint PFR at 17, 20.

By electing a single director board, BSLD fully meets the requirements of state laws and the Ameritech Michigan Order. Therefore, the Commission should again reject Sprint's appeal to insert additional requirements into § 272(b)(3).

[22] Ameritech suggests the Commission use the analytical framework, developed by the Office of Plans and Policy, Chief Economist, and Competition Division of the Office of General Counsel that was used in the 1998 biennial regulatory review process, in evaluating the necessity and effectiveness of the new disclosure requirements (see Notice of Proposed Rulemaking, CC Docket 98-177, at ¶ 4 (rel. Nov. 24, 1998)).

CONCLUSION

For the reasons stated herein, the Commission should both grant BellSouth's PFR and revise the Order in the manner suggested by BellSouth and Ameritech and reject the arguments in the PFRs of AT&T, Sprint, and others.

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Dated: December 15, 1998

CERTIFICATE OF SERVICE

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